

(iii) The label shall have on the upper left side of the label a diagonal orange stripe that is .3125 inches tall. The stripe shall be placed as far down and across the label as is necessary so as to as to create a black triangle of the upper left corner of the label whose vertical side is contiguous to the vertical edge of the label and is .4375 inches long, and whose horizontal side is contiguous to the horizontal edge of the label and is 1.0 inches long. The word "Attention" shall be centered to the upper edge of this stripe.

(5) Alternative labels to those specified in this section may be used if approved by EPA in advance. Such labels must contain all of the informational elements specified in paragraph (a) of this section, and must use colors and other design elements similar in substance and appearance to the label required by this section. Such labels may differ in size and shape from the label required by this section only to a small degree, except to the extent a larger label is necessary to accommodate additional information or translation of label information.

(i) If you use U.S. Mail, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1200 Pennsylvania Avenue, NW., Washington, DC 20460.

(ii) If you use an overnight or courier service, send a request for approval of an alternative label to: U.S. EPA, Attn: E15 Alternative Label Request, 6406J, 1310 L Street, NW., 6th Floor, Washington, DC 20005. (202) 343-9038.

**§ 80.1502 What are the survey requirements related to gasoline-ethanol blends?**

Any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend that is intended for use in or as E15 shall comply with the survey program requirements in either paragraph (a) or paragraph (b) of this section. These same parties are also subject to paragraphs (c), (d) and (e) of this section regardless of whether they choose the

survey program requirements in paragraph (a) or paragraph (b) of this section. In the case of ethanol producers and ethanol importers, the ethanol that is produced or imported shall be deemed as intended for use in E15 unless an ethanol producer or an ethanol importer demonstrates that it was not intended for such use.

(a) *Survey option 1.* In order to satisfy the survey program requirements, any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 shall properly conduct a program of compliance surveys in accordance with a survey program plan which has been approved by EPA in all areas which may be reasonably expected to be supplied with their gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend if these may be used to manufacture E15 or as E15 at any time during the year. Such approval shall be based upon the survey program plan meeting the following criteria:

(1) The survey program shall consist of at least quarterly surveys which shall occur during the following time periods in every year during which the gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer introduces E15 into commerce:

(i) One survey during the period January 1 through March 31;

(ii) One survey during the period April 1 through June 30;

(iii) One survey during the period July 1 through September 30; and

(iv) One survey during the period October 1 through December 31.

(2) The survey program plan shall meet all of the requirements of paragraph (b), except paragraphs (b)(4)(ii) and (b)(4)(v) of this section. The survey program plan shall specify the sampling strata, clusters and area, and number of samples to be included. Notwithstanding paragraph (b)(2) of this section, in order to comply with this paragraph the survey plan need not be conducted by a consortium.

(b) *Survey option 2.* (1) To comply with the requirements under this paragraph (b), any gasoline refiner, gasoline importer, ethanol blender, ethanol producer, or ethanol importer who manufactures, introduces into commerce, sells or offers for sale E15, gasoline, blendstock for oxygenate blending, ethanol, or gasoline-ethanol blend intended for use in or as E15 must participate in a consortium which arranges to have an independent survey association conduct a statistically valid program of compliance surveys pursuant to a survey program plan which has been approved by EPA, in accordance with the requirements of paragraphs (b)(2) through (b)(4) and (b)(6) of this section.

(2) The consortium survey program under this paragraph (b) must be:

(i) Planned and conducted by a survey association that is independent of the ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted. In order to be considered independent:

(A) Representatives of the survey association shall not be an employee of any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer;

(B) The survey association shall be free from any obligation to or interest in any ethanol blender, ethanol producer, ethanol importer, gasoline refiner, or gasoline importer; and

(C) The ethanol blenders, ethanol producers, ethanol importers, gasoline refiners, and/or gasoline importers that arrange to have the survey conducted shall be free from any obligation to or interest in the survey association.

(ii) Conducted at retail outlets that sell gasoline; and

(iii) Represent all gasoline dispensed nationwide.

(3) *Independent Survey Association Requirements.* The consortium described in paragraph (b)(1) of this section shall require the independent survey association conducting the surveys to:

(i) Submit to EPA for approval each calendar year a proposed survey program plan in accordance with the requirements of paragraph (b)(4) of this section.

(ii) Obtain samples of gasoline offered for sale at gasoline retail outlets in accordance with the survey program plan approved under this paragraph (b), or immediately notify EPA of any refusal of retail outlets to allow samples to be taken.

(iii) Test, or arrange to be tested, the samples required under paragraph (b)(3)(ii) of this section for Reid vapor pressure (RVP), and oxygenate content as follows:

(A) Samples collected at retail outlets shall be shipped the same day the samples are collected via ground service to the laboratory and analyzed for oxygenate content. Samples collected at a dispenser labeled E15 in any manner, or at a tank serving such a dispenser, shall also be analyzed for RVP. Such analysis shall be completed within 10 days after receipt of the sample in the laboratory. Nothing in this section shall be interpreted to require RVP testing of a sample from any dispenser or tank serving it unless the dispenser is labeled E15 in any manner.

(B) Any laboratory to be used by the independent survey association for oxygenate or RVP testing shall be approved by EPA and its test method for determining oxygenate content shall be a method permitted under § 80.46(g), and its test method for determining RVP shall be the method permitted under § 80.46(b).

(iv) In the case of any test that yields a result that does not match the label affixed to the product (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as “E15” or a sample containing greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as “E15”), or the RVP standard of § 80.27(a)(2), the independent survey association shall, within 24 hours after the laboratory receives the sample, send notification of the test result as follows:

(A) In the case of a sample collected at a retail outlet at which the brand name of a gasoline refiner or gasoline importer is displayed, to the gasoline refiner or gasoline importer, and EPA. This initial notification to a gasoline refiner or gasoline importer shall include specific information concerning

the name and address of the retail outlet, contact information, the brand, and the ethanol content, and the RVP if required, of the sample.

(B) In the case of a sample collected at other retail outlets, to the retailer and EPA, and such notice shall contain the same information as in paragraph (b)(3)(iv)(A) of this section.

(C) The independent survey association shall provide notice to the identified contact person or persons for each party in writing (which includes e-mail or facsimile) and, if requested by the identified contact person, by telephone.

(v) Confirm that each fuel dispenser sampled is labeled as required in § 80.1501 by confirming that:

(A) The label meets the appearance and content requirements of § 80.1501.

(B) The label is located on the fuel dispenser according to the requirements in § 80.1501.

(vi) In the case of a fuel dispenser that is improperly labeled, or whose fuel does not meet the RVP standards of § 80.27(a)(2) the survey association shall provide notice as provided in paragraphs (b)(2)(iv)(A) through (C) of this section.

(vii) Provide to EPA quarterly and annual summary survey reports which include the information specified in paragraph (b)(5) of this section.

(viii) Maintain all records relating to the surveys conducted under this paragraph (b) for a period of at least five (5) years.

(ix) Permit any representative of EPA to monitor at any time the conducting of the surveys, including sample collection, transportation, storage, and analysis.

(4) *Survey Plan Design Requirements.* The proposed survey program plan required under paragraph (b)(3)(i) of this section shall, at a minimum, include the following:

(i) *Number of Surveys.* The survey program plan shall include four quarterly surveys each calendar year. The four quarterly surveys collectively are called the survey series as defined in § 80.1500.

(ii) *Sampling Areas.* The survey program plan shall include sampling in all

sampling strata, as defined in § 80.1500, during each survey. These sampling strata shall be further divided into discrete sampling areas or clusters. Each survey shall include sampling in at least 40 sampling areas in each stratum which are randomly selected.

(iii) *No advance notice of surveys.* The survey plan shall include procedures to keep the identification of the sampling areas that are included in any survey plan confidential from any regulated party prior to the beginning of a survey in an area. However, this information shall not be kept confidential from EPA.

(iv) *Retail outlet selection.* (A) The retail outlets to be sampled in a sampling area shall be selected from among all retail outlets in the sampling area that sell gasoline, with the probability of selection proportionate to the volume of gasoline sold at the retail outlets; the sample should also include retail outlets with different brand names as well as those retail outlets that are unbranded.

(B) In the case of any retail outlet from which a sample of gasoline was collected during a survey and determined to have an ethanol content that does not match the fuel dispenser label (e.g. a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as "E15" or a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as "E15") or determined to have a dispenser containing fuel whose RVP does not comply with § 80.27(a)(2), that retail outlet shall be included in the subsequent survey.

(C) One sample of each product dispensed as gasoline shall be collected at each retail outlet, and separate samples shall be taken that represent the gasoline contained in each gasoline storage tank unless collection of separate samples is not practicable.

(v) *Number of samples.* (A) The minimum number of samples to be included in the survey plan for each calendar year shall be calculated as follows:

$$n = \left\{ \left[ (Z_{\alpha} + Z_{\beta}) \right]^2 / (4 * [\arcsin(\sqrt{\phi_1}) - \arcsin(\sqrt{\phi_0})]^2) \right\} * St_n * F_a * F_b * Su_n$$

Where:

$n$  = minimum number of samples in a year-long survey series. However, in no case shall  $n$  be smaller than 7,500.

$Z_{\alpha}$  = upper percentile point from the normal distribution to achieve a one-tailed 95% confidence level (5%  $\alpha$ -level). Thus,  $Z_{\alpha}$  equals 1.645.

$Z_{\beta}$  = upper percentile point to achieve 95% power. Thus,  $Z_{\beta}$  equals 1.645.

$\phi_1$  = the maximum proportion of non-compliant stations for a region to be deemed compliant. In this test, the parameter needs to be 5% or greater, *i.e.*, 5% or more of the stations, within a stratum such that the region is considered non-compliant. For this survey,  $\phi_1$  will be 5%.

$\phi_0$  = the underlying proportion of non-compliant stations in a sample. For the first survey plan,  $\phi_0$  will be 2.3%. For subsequent survey plans,  $\phi_0$  will be the average of the proportion of stations found to be non-compliant over the previous four surveys.

$St_n$  = number of sampling strata. For purposes of this survey program,  $St_n$  equals 3.

$F_a$  = adjustment factor for the number of extra samples required to compensate for collected samples that cannot be included in the survey, based on the number of additional samples required during the previous four surveys. However, in no case shall the value of  $F_a$  be smaller than 1.1.

$F_b$  = adjustment factor for the number of samples required to resample each retail outlet with test results exceeding the labeled amount (e.g., a sample greater than 15.0 volume percent ethanol dispensed from a fuel dispenser labeled as “E15”, a sample with greater than 10.0 volume percent ethanol and not more than 15.0 volume percent ethanol dispensed from a fuel dispenser not labeled as “E15”), or a sample dispensed from a fuel dispenser labeled as “E15” with greater than the applicable seasonal and geographic RVP pursuant to §80.27, based on the rate of resampling required during the previous four surveys. However, in no case shall the value of  $F_b$  be smaller than 1.1.

$Su_n$  = number of surveys per year. For purposes of this survey program,  $Su_n$  equals 4.

(B) The number of samples determined pursuant to paragraph (b)(4)(v)(A) of this section, after being incremented as necessary to allocate whole numbers of samples to each clus-

ter, shall be distributed approximately equally for the quarterly surveys conducted during the calendar year.

(5) *Summary survey reports.* The quarterly and annual summary survey reports required under paragraph (b)(3)(vii) of this section shall include the following information:

(i) An identification of the parties that are participating in the survey.

(ii) The identification of each sampling area included in a survey and the dates that the samples were collected in that area.

(iii) For each retail outlet sampled:

(A) The identification of the retail outlet;

(B) The gasoline refiner or gasoline importer brand name displayed, if any;

(C) The fuel dispenser labeling (e.g., “E15”);

(D) The sample test result for oxygenate content, and RVP result, if any;

(E) The test method used to determine oxygenate content under §80.46(g); and

(F) The test method used to determine RVP under §80.46(b).

(iv) Ethanol level summary statistics by brand and unbranded for each sampling area, strata, and survey series. These summary statistics shall:

(A) Include the number of samples, the average, median and range of ethanol content, expressed in volume percent.

(B) [Reserved]

(v) The quarterly reports required under this paragraph (b)(5) are due 60 days following the end of the quarter. The annual reports required under this paragraph (b)(5) are due 60 days following the end of the calendar year.

(vi) The reports required under this paragraph (b)(5) shall be submitted to EPA in an electronic spreadsheet.

(c) *Procedures for obtaining approval of survey plan and providing required notices.* The first year in which a survey program is conducted may consist of only a portion of a calendar year ending on December 31 (*i.e.*, in the initial year, a survey program may begin on a date after January 1, but would still

end on December 31). Subsequent survey programs shall be conducted on a calendar year basis. The procedure for obtaining EPA approval of a survey program plan under paragraph (b) or paragraph (c) of this section is as follows:

(1) For the first year in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than 60 days prior to the date on which the survey program is to begin.

(2) For subsequent years in which a survey will be conducted, a survey program plan that complies with the requirements of paragraph (a) or paragraph (b) of this section must be submitted to EPA no later than November 1 of the year preceding the calendar year in which the survey will be conducted.

(3) The survey program plan must be signed by a responsible officer of the consortium which arranges to have an independent surveyor conduct the survey program.

(4) The survey program plan must be sent to the following address: Director, Compliance and Innovative Strategies Division, U.S. Environmental Protection Agency, 1200 Pennsylvania Ave., NW., Mail Code 6506J, Washington, DC 20460.

(5) EPA will send a letter to the party submitting the survey program plan that indicates whether EPA approves or disapproves the survey plan.

(6) The approving official for a survey plan under this section is the Director of the Compliance and Innovative Strategies Division, Office of Transportation and Air Quality.

(7) Any notifications or reports required to be submitted to EPA under this section must be directed to the official designated in paragraph (b)(6)(iv) of this section.

(d) *Independent surveyor contract.* (1) For the first year in which a survey program will be conducted, no later than 30 days preceding the start of the survey, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed

into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(2) For subsequent years in which a survey program will be conducted, no later than December 1 of the year preceding the year in which the survey will be conducted, the contract with the independent surveyor shall be in effect, and an amount of money necessary to carry out the entire survey plan shall be paid to the independent surveyor or placed into an escrow account with instructions to the escrow agent to pay the money to the independent surveyor during the course of the conduct of the survey plan.

(3) For the first year in which a survey program will be conducted, no later than 15 days preceding the start of the survey EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if the money has been placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(4) For subsequent years in which a survey program will be conducted, no later than December 15 of the year preceding the year in which the survey will be conducted, EPA must receive a copy of the contract with the independent surveyor and proof that the money necessary to carry out the survey plan has either been paid to the independent surveyor or placed into an escrow account; if placed into an escrow account, a copy of the escrow agreement must be sent to the official designated in paragraph (b)(6)(iv) of this section.

(e) *Consequences of failure to fulfill requirements.* A failure to fulfill or cause to be fulfilled any of the requirements of this section is a prohibited act under Clean Air Act section 211(c) and § 80.1504.

(1) EPA may revoke its approval of a survey plan under this section for cause, including, but not limited to, an EPA determination that the approved

survey plan has proved to be inadequate in practice.

(2) EPA may void *ab initio* its approval of a survey plan if EPA's approval was based on false information, misleading information, or incomplete information, or if there was a failure to fulfill, or cause to be fulfilled, any of the requirements of the survey plan.

**§ 80.1503 What are the product transfer document requirements for gasoline-ethanol blends, gasolines, and conventional blendstocks for oxygenate blending subject to this subpart?**

(a) *Product transfer documentation for conventional blendstock for oxygenate blending, or gasoline transferred upstream of an ethanol blending facility.* (1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any conventional blendstock for oxygenate blending which could become conventional gasoline solely upon the addition of ethanol, or gasoline upstream of an oxygenate blending facility, as defined in § 80.2(l), the transferor shall provide to the transferee product transfer documents which include the following information:

- (i) The name and address of the transferor;
- (ii) The name and address of the transferee;
- (iii) The volume of conventional blendstock for oxygenate blending or gasoline being transferred;
- (iv) The location of the conventional blendstock for oxygenate blending or gasoline at the time of the transfer;
- (v) The date of the transfer;
- (vi) For gasoline during the regulatory control periods defined in § 80.27(a)(2)(ii) or any SIP approved or promulgated under §§ 110 or 172 of the Clean Air Act:

(A) The maximum RVP, as determined by a method permitted under § 80.46(c), stated in the following format: “The RVP of this gasoline does not exceed [fill in appropriate value]”; and

(B) For gasoline designed for the special provisions for gasoline-ethanol blends in § 80.27(d)(2), information about the ethanol content and RVP in

paragraphs (a)(1) through (a)(3) of this section, with insertions as indicated:

(1) “Suitable for the special RVP provisions for ethanol blends that contain between 9 and 10 vol % ethanol.”

(2) “The RVP of this blendstock/gasoline for oxygenate blending does not exceed [Fill in appropriate value] psi.

(3) The use of this gasoline to manufacture a gasoline-ethanol blend containing anything other than between 9 and 10 volume percent ethanol may cause a summertime RVP violation.

(C) For gasoline not described in paragraph (a)(vi)(B) of this section, information regarding the suitable ethanol content, stated in the following format: “Suitable for blending with ethanol at a concentration of no more than 15 vol % ethanol.”

(2) The requirements in paragraph (a)(1) do not apply to reformulated gasoline blendstock for oxygenate blending, as defined in § 80.2(kk), which are subject to the product transfer document requirements of § 80.69 and § 80.77.

(b) *Product transfer documentation for gasoline transferred downstream of an oxygenate blending facility.* (1) In addition to any other product transfer document requirements under 40 CFR part 80, on each occasion after October 31, 2011, when any person transfers custody or title to any gasoline-ethanol blend downstream of an oxygenate blending facility, as defined in § 80.2(l), except for transfers to the ultimate consumer, the transferor shall provide to the transferee product transfer documents which include the following information:

- (i) The name and address of the transferor;
- (ii) The name and address of the transferee;
- (iii) The volume of gasoline being transferred;
- (iv) The location of the gasoline at the time of the transfer;
- (v) The date of the transfer; and

(vi) One of the statements detailed in paragraph (b)(1)(vi)(A) though (E) which accurately describes the gasoline-ethanol blend. The information regarding the ethanol content of the fuel is required year-round. The information regarding the RVP of the fuel is only required for gasoline during the regulatory control periods.